

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

ORLANDO MARTINEZ,	)	
	)	
Movant,	)	
	)	
v.	)	No. 4:10CV33 JCH
	)	
UNITED STATES OF AMERICA,	)	
	)	
Respondent.	)	

**MEMORANDUM AND ORDER**

This matter is before the Court upon review of movant’s response to the order to show cause.<sup>1</sup> Having carefully reviewed movant’s response, the Court concludes that his arguments are without merit and that the instant action is time-barred.

Movant argues that his untimely filing should be exempted from the statute of limitations set forth in Rule 4(b) of the Rules Governing § 2255 Proceedings because he is “actually innocent” of the crime which he was convicted. Movant offers no other factual information regarding his claim of “actual innocence.”

Although a showing of actual innocence may excuse an untimely filing, the petitioner has “to show some action or inaction on the part of respondent that

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<sup>1</sup>On February 24, 2010, the Court ordered petitioner to show cause as to why the Court should not dismiss his motion to vacate, set aside or correct sentence as time-barred.

prevented him from discovering the relevant facts in a timely fashion, or at the very least, that a reasonably diligent petitioner could not have discovered these facts in time to file a petition within the period of limitations.” Flanders v. Graves, 299 F.3d 974, 978 (8th Cir. 2002). Petitioner has failed to offer any explanation of his claim for “actual innocence,” and he has not articulated how he was prevented him from filing his motion to vacate in a timely fashion. As such, his motion will be denied as time-barred.

Accordingly,

**IT IS HEREBY ORDERED** that movant’s motion to vacate, set aside or correct sentence is **DENIED** as time-barred.

A separate Order of Dismissal shall accompany this Memorandum and Order.

Dated this 26th day of April, 2010.

/s/ Jean C. Hamilton  
JEAN C. HAMILTON  
UNITED STATES DISTRICT JUDGE